

**FILED**

**NOV 19 2007**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RODNEY AUDIE BELVADO,

Defendant - Appellant.

No. 06-10699

D.C. No. CR-05-00014-EHC

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Arizona  
Earl H. Carroll, District Judge, Presiding

Argued and Submitted October 16, 2007  
San Francisco, California

Before: BRUNETTI, W. FLETCHER, and CLIFTON, Circuit Judges.

Rodney Belvado appeals his conviction for first degree murder of Homer  
Jess Stevens. We remand for consideration of whether Belvado's confession was  
knowing.

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

A waiver of Miranda rights by a suspect in custody must be both knowing and voluntary. *Benson v. Terhune*, 304 F.3d 874, 882 (9th Cir. 2002). The district court's order denying Belvado's motion to suppress his confession contains a detailed analysis of the voluntariness of Belvado's confession. But the order did not make clear that the court considered whether Belvado's confession was also knowing. Given Belvado's mental retardation, there is a distinct question as to the knowingness of his confession. *See United States v. Garibay*, 143 F.3d 534, 537-38 (9th Cir. 1998). We therefore remand to the district court to determine whether Johnson confessed "with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *See Moran v. Burbine*, 475 U.S. 412, 421 (1984).

We find no merit in Belvado's other two challenges to his conviction. First, Belvado was able to present evidence from his mental health expert regarding how his mental retardation could have affected the reliability of statements in his confession. Between the expert's testimony and Belvado's counsel's closing argument, the jury had enough information to decide whether Belvado's confession was truthful or the product of suggestion. *See United States v. Finley*, 301 F.3d 1000, 1015-16 (9th Cir. 2002).

Second, the district court did not err in denying Belvado's motion to dismiss the case for lack of corroborating evidence. Although there was no physical evidence tying Belvado to the crime, witnesses placed him at the scene and other evidence corroborated details in his confession. *United States v. Corona-Garcia*, 210 F.3d 973, 978 (9th Cir. 2000).

**REMANDED.**